Supreme Court,
FILED
FEB 21 1929
CHARLES ELMORE CROPLEY
Clerk

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1928.

No. 364

SEVERINO ALBERTO, Petitioner,

v.

BONIFACIO NICOLAS, Respondent.

STATEMENT AND BRIEF FOR RESPONDENT.

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No. 364

SEVERINO ALBERTO, PETITIONER,

v.

BONIFACIO NICOLAS, RESPONDENT.

BRIEF FOR RESPONDENT.

Statement of the Case and Jurisdiction of This Court.

The question presented for determination in these certiorari proceedings is not the same question that was at issue before the Philippine Supreme Court in the original quo-warranto proceedings.

The Philippine Supreme Court had to pass upon the following question: Does the local law in the Philippines vest the Governor General with the power to transfer a Justice of the Peace from one municipality

to another? The Philippine Supreme Court answered the question in the negative, holding that the power to transfer a justice of the peace from one municipality to another, was an exercise of the combined power of removal and appointment, and that, consequently, said power could only be exercised by the Governor General, by and with the advice and consent of the Philippine Senate.

Against this decision, these certiorari proceedings have been instituted. Section 7 of the Act of Congress of February 13, 1925, grants this Court the power to review, by certiorari, a final judgment of the Supreme Court of the Philippine Islands in any case "wherein * * * any statute * * * of the United States is involved." And the jurisdiction of this Honorable Court is invoked solely on the ground that, in the instant case, a statute of the United States is involved; namely the Jones Law, which is the Organic Act passed by the Congress for the Philippine Islands.

To justify the jurisdiction of this Court, opposing counsel admit in their brief that "in this case the question is whether the construction placed by the Supreme Court of the Philippine Islands upon an Act of the Philippine Legislature is in harmony with the Act of Congress known as the Jones Law; which constitutes the Organic Act for the Philippine Islands; so that a statute of the United States is herein involved" (Brief of Opposing Counsel, p. 10).

The question, then, as pressed by opposing counsel, no longer remains the determination of the meaning of the local law in the Philippines on the matter, but

has been converted into whether or not that law is in harmony with the Philippine Organic Act.

Certainly, if the Jones Law were involved in this case, it would be because the alleged power of the Governor General to transfer a Justice of the Peace from one municipality to another without the advice and consent of the Senate, was derived from the Jones Law itself, and not merely from a local statute enacted by the local legislative authority in the Philippines.

The jurisdiction of this Honorable Court in the instant case, is limited to the interpretation of the Philippine Organic Act, the Act of Congress known as the Jones Law. It has no jurisdiction at all to interpret a local law of the Philippine Islands enacted by the Philippine Legislature.

In the leading case of Elmendorf *vs.* Taylor (10 Wheat. 152; 6 L. ed. 289), Chief Justice Marshall announced the well established doctrine that "the judicial department of every government, where such department exists, is the appropriate organ for construing the legislative acts of that government. • • • On this principle the construction given by this Court to the Constitution and laws of the United States is received by all as the true construction; and on the same principle the construction given by the courts of the several States of the legislative acts of those States is received as true, unless they come in conflict with the Constitution, laws, or treaties of the United States."

In a later case, Shelby *v.* Guy (11 Wheat. 361, 367), this Honorable Court said:

> "Nor is it questionable that a fixed and received construction of their respective statute laws in their own courts makes, in fact, a part of the statute law of the country, however we may doubt the propriety of that construction. It is obvious that this admission may at times involve us in seeming inconsistencies, as where States have adopted the same statutes and their courts differ in the construction. Yet that course is necessarily indicated by the duty imposed on us to administer, as between certain individuals, the laws of the respective States, according to the best lights we possess of what those laws are."

It is well settled that where a civil right depends upon some matter pertaining to ecclesiastical affairs, the civil tribunal tries the civil right and nothing more, taking the ecclesiastical decisions out of which the civil right has arisen as it finds them, and accepting those decisions as conclusive and as matters adjudicated by another jurisdiction. The civil courts in such a case act upon the theory that the ecclesiastical tribunals are the best judges of questions essentially ecclesiastical in nature (Watson v. Jones, 13 Wall. 679; See also note appearing in 49 L. R. A., 386).

Reasoning by analogy, it may be said that where a *federal* question is connected with some matter pertaining to *local* law, this Honorable Court will decide only the federal question involved and nothing more, taking the decision of the Philippine Supreme Court on the local law as conclusive and as a matter adjudicated by another jurisdiction. This Honorable Court

must agree that the Philippine Supreme Court is the best judge to interpret and pass upon a purely local law and that, moreover, to question and to reverse the interpretation given by the Philippine Supreme Court to the local law would be outside the scope of the jurisdiction of this Honorable Court.

This Honorable Court in a long line of decisions has enunciated that it will not be disposed to disturb the judgment of the Philippine Supreme Court construing local laws and enunciating a rule applicable in the Islands (Gauson v. Cia. Gral. de Tabacos de Filipinas, 245 U. S. 86).

The construction given to the statute of a state by the highest judicial tribunal of such state is regarded as a part of the statute, and is as binding as is the text upon the courts of the United States. (Oakes *v.* Mase, 165 U. S. 181; Sohn *v.* Waterson, 17 Wall. 596; Adams *v.* Nashville, 95 U. S. 19; Grafton *v.* Cummings, 99 U. S. 100; Nobles *v.* Georgia, 168 U. S. 398; New York, L. E. & W. R. Co. *v.* Pennsylvania, 158 U. S. 431; First Nat. Bank *v.* Chehalis County, 166 U. S. 440; Baltimore Traction Co. *v.* Baltimore R. Co., 151 U. S. 137; Aicardi *v.* Alabama, 19 Wall. 635; Chicago, M. & St. P. R. Co. *v.* Minnesota ex rel. Railroad & W. Commission, 134 U. S. 418; Fairfield *v.* Gallatin County, 100 U. S. 47; Morley *v.* Lake Shore & M. S. R. Co., 146 U. S. 162; St. Louis, I. M. & S. R. Co. *v.* Paul, 173 U. S. 404; First Nat. Bank *v.* Ayers, 160 U. S. 660; New York ex rel. Williams *v.* Weaver, 100 U. S. 539.)

In view of the foregoing considerations, this Honorable Court will not disturb the interpretation given

the said local statutory law by the Philippine Supreme Court unless that interpretation give the statute an effect contrary to the provisions of the Organic Act. To test this proposition let us suppose that the proviso to Section 206, permitting the transfer of Justices of the Peace, affirmatively stated that such transfers could be made *only* with the advice and consent of the Philippine Senate. Would such a statute have been contrary to any of the provisions of the Organic Law? What the Philippine Supreme Court has said is that the proviso as enacted into the law means just that and no more; that inasmuch as the proviso does not authorize the Governor General to transfer (remove and appoint) Justices of the Peace without the consent of the Philippine Senate, such transfer if made will have to be done in accordance with Sec. 21 of the Organic Act, which requires the consent of the Senate unless otherwise provided.

ARGUMENT.

Reply to Point I.

THE TRANSFER OF A JUSTICE OF THE PEACE FROM ONE MUNICIPALITY TO ANOTHER IS, IN LEGAL EFFECT, A COMBINED REMOVAL AND APPOINTMENT; HENCE, HAVING THE NATURE OF AN APPOINTMENT WITHIN THE MEANING OF THE PROVISIONS OF SECTION 21 OF THE ORGANIC ACT, ITS EXERCISE MUST BE WITH THE ADVICE AND CONSENT OF THE PHILIPPINE SENATE.

In deciding the merits of this case, this Honorable Court is bound by the interpretation given by the Phil-

ippine Supreme Court to the (word) "transfer" of a Justice of the Peace from one municipality to another.

Opposing counsel makes the gratuitous statement that, although a "transfer" is akin both to appointment and to removal, it is, nevertheless, a separate and distinct kind of administrative act, and is the exercise of a distinct executive function (Opposing Counsel's Brief, p. 13). Two kinds of "transfer" are to be noted. We should distinguish "transfers" from one *locality* to *another* and "transfers" from *one office* to *another office*. In the former case, no new appointment takes place. In the latter, the "transfer" amounts, in reality, to a removal and a new appointment.

The Philippine Legislature in clear words has provided that "one Justice of the Peace and one Auxiliary Justice of the Peace shall be appointed by the Governor General, with the advice and consent of the Philippine Senate, *for* * * * *each municipality*, * * * in the Philippine Islands * * *" (Administrative Code, Section 203; Act No. 3107, Section 7) (Italics ours). He takes the oath of office for the performance of his duties as Justice of the Peace of the *specific municipality* to which he is appointed (Ibid, Sec. 205), just as a Judge of First Instance takes the oath of office for the performance of his duties as Judge of the *particular district* to which he is appointed (See Concepcion v. Paredes, 42 Philippines 599). A comparison of the provisions regarding Judges of First Instance (Sections 65, 66, 148, 154, 128, 155 and 173) with those regarding Justices of the Peace (Sections 203, 204,

205, 206, 210 and 229) shows that "*the intention of the law is to recognize separate and distinct judicial offices*" (See Borromeo *v.* Mariano, 41 Philippines 322).

In the appointment of a Justice of the Peace, the concurrence of the Senate, which is also an executive act involving the exercise of discretion (Concepcion *v.* Paredes, 42 Philippines 591), is secured only for the *specific municipality* to which the appointment is made. Consequently, a "transfer" by the Governor General alone would be to make the transferee Justice of the Peace of another municipality without the concurrence of the Senate, which is an essential requisite provided for by the Philippine Organic Act, in the absence of which the executive act is incomplete.

Now, the Philippine Supreme Court in interpreting the foregoing provisions has dispelled any possible doubt regarding the same, by holding that:

(*a*) "The Justice of the Peace is appointed to a specific municipality" (Transcript of Record, p. 41). Hence, it is useless to argue that "Justices of the Peace are not appointed to a purely local office in a particular municipality" (Opposing Counsel's Brief, p. 17).

(*b*) "The Justice of the Peace gets in (to a certain municipality) by appointment. He gets out by removal. There is no half way in-or-out method. A transfer of a Justice of the Peace outside of the municipality to which he was appointed is, in legal effect, a combined removal and appointment." (Transcript of Record, pp. 41 and 42). Again, it is useless to argue that the "proviso expressly contemplates transfer. It does not speak of it as a new appointment" (Opposing Counsel's Brief, p. 16).

The decision of the Philippine Supreme Court interpreting the different provisions of the Philippine Law with reference to the office of Justice of the Peace is now an integral part of the law itself. Its effect is equivalent to a legislative enactment.

Whatever may be the rule in other jurisdictions, it can not be denied that, by the local law which prevails in the Philippine Islands, judges of the courts of first instance and justices of the peace are respectively appointed to specific provinces and municipalities, and they may not be transferred, in the case of judges, from them without their consent, and in the case of Justices of the Peace, without the consent of the Philippine Senate. (Borromeo *v.* Mariano *supra;* Concepcion *v.* Paredes *supra;* and the decision of the Philippine Supreme Court in the *instant case.*)

As already stated, the jurisdiction of this Honorable Court in the instant case is limited to interpreting the Philippine Organic Act, which is an Act of Congress. It has no jurisdiction at all to interpret the statutory law as enacted by the Philippine Legislature with reference to the nature of the office of Justices of the Peace.

We agree with opposing counsel in their interpretation of Sections 21 and 22 of the Organic Act (opposing Counsel's Brief, pp. 13 & 14). There is no controversy at all regarding the nature and extent of the executive functions vested in the Governor General. The disagreement, as can readily be seen, lies in the interpretation of the Philippine Law, purely local, enacted by the Philippine Legislature on the na-

ture of the office of Justice of the Peace. If, as contended by opposing counsel, a Justice of the Peace were appointed at large for any and all of the municipalities in the Philippines and not to a particular municipality (Opposing Counsel's Brief, p. 17), we could agree with them that in such a case, the transfer of a Justice of the Peace from one municipality to another might not amount, in legal effect, to the exercise of the combined power of removal and appointment. But such is not this case.

As already stated, the offices of Justice of the Peace of the different municipalities in the Philippines are distinct and separate from one another. They are as different and distinct from one another as the office of Justice of the Peace of a certain municipality is from the office of Judge of First Instance of a certain judicial district. If this Honorable Court were to decide that a Justice of the Peace might be transferred from one office to another, it could just as well decide also that the Governor General were, likewise, empowered to transfer a Justice of the Peace from his municipality to the office of Judge of First Instance of a certain district.

Reply to Point II.

THE PHILIPPINE LEGISLATURE NEVER INTENDED TO VEST IN THE GOVERNOR GENERAL THE POWER TO MAKE SUCH TRANSFERS WITHOUT THE ADVICE AND CONSENT OF THE SENATE. THAT THE PHILIPPINE LEGISLATURE INTENDED THE CONTRARY HAS ALREADY BEEN SETTLED BY THE PHILIPPINE SUPREME COURT, AND THIS HONORABLE COURT WILL NOT PASS UPON THE MATTER.

It is argued by opposing counsel that, since the proviso to Section 206 of the Philippine Administrative Code providing for such transfers is silent as to who shall make them, such transfers should be made in accordance with the distribution of powers among the different departments of the Philippine Government under the Organic Act.

Here, again, opposing counsel tries to argue that a Justice of the Peace is appointed at large for any municipality in the Philippines, and not to a particular municipality; and that, consequently, a transfer of a Justice of the Peace from one municipality to another is merely a transfer of a public officer from one *locality* to another, and not a transfer of an officer from one *public office* to another. (Opposing Counsel's Brief, pp. 15 & 16).

But, as already stated in our reply to Point One, the nature of a transfer of a Justice of the Peace from one municipality to another is entirely a local statutory matter, and the Philippine Legislature has provided that the offices of Justice of the Peace of the different municipalities are distinct and separate from one another.

In answer to the point raised by opposing counsel with reference to the legislative history of the proviso in question, we can do no better than to quote from the learned opinion of the Philippine Supreme Court, penned by Mr. Justice Malcolm, the following:

> "The Attorney-General endeavors to demonstrate the purpose of the Legislature by citing the legislative history of the bill which later became Act No. 2768. The Attorney-General shows that when the house bill was submitted to the Senate an amendment was approved by inserting the following: '*siempre que su nombramiento, en virtud del traslado, sea confirmado por el Senado.*' (Provided, that his appointment by virtue of the transfer be confirmed by the Senate.) Later the amendment was eliminated and the bill approved in its present form. It may, therefore, be that the Legislature had in view, by refusing to accept the amendment, precisely what is now contended for, which is to place the power of transfer in the hands of the Governor-General without legislative restriction. An equally permissible supposition is that the Legislature thought the amendment unnecessary and superfluous because of the plain meaning of the bill without it. The subject is so confused that no help can be derived from this source" (Transcript of Record, p. 43).

That the foregoing interpretation of the law adopted by the Supreme Court of the Philippine Islands is similar to that adopted by the Executive Department of the Government is shown by the following opinions:

> "*Justice of the peace cannot be transferred without consent of Senate.*—The consent of the

Senate is necessary to appointments by transfer as well as to newly combined jurisdictions, for the following reasons: (1) Justices of the peace and auxiliary justices are appointed, as required by Section 203, to a specific municipality; (2) a justice of the peace whose jurisdiction has been abolished or merged with that of another must necessarily cease to hold office for the position to which he was appointed and which has been abolished. (Op. Ins. Aud., Aug. 11, 1924.)

"*The proviso does not authorize transfer without confirmation of Senate.*—The last proviso was not inserted to give power to appoint justices of the peace to other municipalities or to combine jurisdiction by transfer without further confirmation from the Senate, but was inserted merely to assert the right of the Government to transfer justices of the peace from one jurisdiction to another even without their consent. (Op. Ins. Aud., Aug. 11, 1924.)

Araneta on the Administrative Code, Vol. 1, 350.

Be that as it may, the fact remains that, the Philippine Supreme Court having passed upon the intent of the Philippine Legislature in enacting the said proviso and given to it a definite and clear interpretation, this Honorable Court will not pass upon the subject in these certiorari proceedings.

Conclusion.

The Philippine Law, as enacted by the Philippine Legislature and as interpreted by the Philippine Supreme Court, is to the effect that the offices of Justice of the Peace in the different municipalities, are distinct

and separate from one another; that a transfer of a Justice of the Peace from one municipality to another is not a transfer of an officer from one locality to another, but a combined removal and appointment of an officer from one office to another distinct office.

This being the local statutory law on the matter, it is evident that, under the Philippine Organic Act, the so-called transfer of a Justice of the Peace from one municipality to another can only be made by the Governor General by and with the advice and consent of the Philippine Senate.

We submit, therefore, that the only question before this Honorable Court for solution is whether the provision of the Philippine Administrative Code permitting the transfer of a Justice of the Peace from one municipality to another as interpreted by the Philippine Supreme Court is contrary to the Organic Act (Jones Law), which provides that the Governor-General of the Philippine Islands "* * * shall, unless otherwise herein provided, appoint, by and with the consent of the Philippine Senate * * *." This being the only question presented to this Honorable Court for review, we pray that judgment may be entered for the respondent.

Respectfully,

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